

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON**

ZIRCONIA PUBLISHING, INC., a  
Colorado corporation,

Plaintiff,

v.

JOHN DOE 1 A/K/A “JOANNAH  
CLARKSON”, AND JOHN DOES 2-10,  
individuals or unknown entities.

Defendants.

NO.: 2:15-cv-00598

**PLAINTIFF’S MOTION FOR LEAVE  
TO TAKE EXPEDITED DISCOVERY  
TO LEARN DEFENDANTS’  
IDENTITIES**

**NOTING DATE: APRIL 24, 2015**

**I. INTRODUCTION**

Plaintiff Zirconia Publishing, Inc. (“Zirconia”) moves the Court for leave to take expedited discovery prior to the Rule 26(f) conference.

Zirconia’s complaint seeks damages and injunctive relief relating to Defendants’ wrongful, fraudulent transmission of a Digital Millennium Copyright Act (“DMCA”) takedown notice (the “Notice”), pursuant to 17 U.S.C. § 512, to Amazon.com, Inc. (“Amazon”) in connection with publication of the novel by Zirconia titled: *A Baby for My Billionaire Stepbrother* (the “Book”). Defendants’ Notice falsely claimed that Defendant “Joannah Clarkson” – which on information and belief Zirconia alleges to be a pseudonym – owned the

U.S. copyright in the Book. The Notice caused Amazon to cease publication of the Book, resulting in considerable damages to Zirconia.

Zirconia seeks leave to take immediate discovery on third parties Amazon and Google, Inc. (“Google”) to determine the true identities of the Defendants, including “Clarkson”. Zirconia further seeks leave to take discovery on “Clarkson’s” internet service provider (“ISP”), using the information Zirconia hopes to obtain from Amazon and Google. Without such discovery, Zirconia will be unable to identify the Defendants, and will be unable to pursue this lawsuit or prevent Defendants from filing additional wrongful DMCA notices against Zirconia.

The information that Zirconia seeks may only be available for a limited time, after which it will be permanently unavailable. If that occurs, Defendants’ identities will never be known. Accordingly, Plaintiff seeks permission to conduct limited discovery prior to the Rule 26(f) conference.

## II. FACTS

Zirconia publishes romance novels, including the Book and *A Baby for My Billionaire Stepbrother 2*, *A Baby for My Billionaire Stepbrother 3*, *A Baby for My Billionaire Stepbrother 4*, and *A Baby for My Billionaire Stepbrother 5* (collectively [including the Book], the “Series”). (Declaration of Sean Hennessey ¶ 2.) Zirconia publishes the Series, including the Book, via Amazon’s Kindle Direct Publishing (“KDP”) service. (Hennessey Decl. ¶ 2.) Zirconia is duly authorized by the author of the Book – who holds all copyright in and to the Book and who assigned such copyrights to Zirconia – to publish the Book on Amazon. Defendants have no rights in the Book. (*Id.* ¶ 2.) On or around March 10, 2015, Defendants sent a fraudulent DMCA takedown notice to Amazon, requesting that Amazon cease publication of the Book. (Hennessey Decl. ¶ 3.)

On March 10, 2015, Zirconia’s agent received an email from Amazon, which read, in relevant part:

“Hello,

1 We've received a notice from a third party claiming that the distribution of the following  
2 title you submitted for sale through the Amazon Kindle Store may not be properly  
3 authorized by the appropriate rights holder:

4 B00TJ0LKVU A Baby for My Billionaire Stepbrother by Cassandra Zara

5 As a result, we've suspended sales of this title, pending further investigation.

6 Below is the contact information of the third party who claims you infringed its rights. We  
7 expect that you'll compensate this party appropriately for any infringing copies sold:

8 Joannah Clarkson  
9 joannah.clarkson@gmail.com

10 We take violations of intellectual property rights very seriously. The submission of titles  
11 that violate third-party rights is a violation of our agreement and may lead to suspension or  
12 termination of your account, among other remedies such as access to optional KDP  
13 services being revoked. Please ensure that you own sufficient rights for all your ebook  
14 titles to publish them on the Kindle."

15 (Hennessey Decl. ¶ 3.) On information and belief, Zirconia believes that the name "Joannah  
16 Clarkson" is fictitious and the Notice was sent by a competitor or someone similarly situated.

17 (Hennessey Decl. ¶ 3.)

18 After Amazon ceased publication of the Book, Zirconia contacted Amazon and was able  
19 to resume publication of the Book via KDP. (Hennessey Decl. ¶ 4.) However, the takedown  
20 resulting from Defendants' Notice resulted in significant adverse economic consequences to  
21 Zirconia, including lost sales, ratings, and algorithm-based suggestions. (*Id.* ¶ 4.) Since the Book  
22 is the first novel in the Series, and most readers will not purchase sequels until they have read the  
23 first book in a series, Defendants' wrongful notice caused a decrease in Zirconia's sales of  
24 multiple books. (*Id.* ¶ 4.)

25 Zirconia alleges that Defendants knowingly and willfully misrepresented "Clarkson's"  
26 alleged rights in the Book to Amazon — when in truth "Clarkson" has no rights in the Book —  
and Defendants deliberately caused Amazon to cease publication of the Book, thereby causing  
damage to Zirconia. Defendants' Notice falsely claimed that Zirconia was infringing  
"Clarkson's" copyright by causing the Book to be published via Amazon's Kindle publishing  
service for electronic books. (*Id.* ¶ 4.)



Zirconia respectfully requests leave to serve subpoenas immediately on Amazon, Google, and “Clarkson’s” ISP, so Zirconia can learn the Defendants’ true identities. Doing so will enable Zirconia to serve Defendants with the summons and complaint in this matter, amend its complaint to replace the fictitious names with the Defendants’ true names, and join the proper Defendants in this case. Under Fed. R. Civ. P. 26(d)(1), leave of Court is required before Zirconia can serve the subpoenas until the parties have conferred, but Zirconia cannot confer with Defendants until it learns their true identities. The Court should grant Zirconia’s motion to resolve this dilemma and enable this litigation to proceed.

#### IV. CONCLUSION

Zirconia cannot identify the Defendants without obtaining information from Amazon, Google, and “Clarkson’s” ISP. Zirconia respectfully requests that this Court permit the limited expedited discovery requested, so that Zirconia can discover Defendants’ true identities and proceed with this lawsuit.

Respectfully submitted, and dated this 15th day of April, 2015.

#### **Focal PLLC**

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